



## REMARKS

### ***Summary of the Amendment***

Upon entry of the Listing of Claims, claims 46 – 97 will remain pending.

### ***Summary of the Official Action***

In the instant Office Action, the Examiner has objected to claims 53 – 61 and 81 – 88 and rejected claims 46 – 82 and 89 – 97 over the art of record. By the present amendment and remarks, Applicants submit that the objections and rejections have been overcome, and respectfully request reconsideration of the outstanding Office Action and allowance of the present application.

### ***Merits of All Claims Not Treated in Office Action***

Applicants note, while the Examiner has objected to claims 53 – 61 and 81 – 88, the office action fails to provide any basis for this rejection. As claims 53 and 81 are independent claims from which claims 54 – 61 and 82 – 88 depend, there is no apparent basis for objecting to these claims.

Because the Examiner has not treated the merits of all pending claims in the Office Action, Applicants submit the Office Action is incomplete, such that the next Office Action cannot be made final.

Accordingly, Applicants request the Examiner provide an Office Action with consideration of and a clear disposition of claims 53 – 61 and 81 – 88.

### ***Allowable Subject Matter***

Applicants submit, as no rejections have been made against claims 53 – 61 and 81 – 88, these claims are allowable and should be indicated as such in the next official

communication from the U.S. Patent and Trademark Office.

***Traversal of Rejection Under 35 U.S.C. § 102(b)/103(a)***

Applicants traverse the rejection of claims 46, 47, and 74 – 76 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over TURNER et al. (U.S. Patent No. 4,830,709) [hereinafter “TURNER”]. The Examiner asserts that TURNER shows a device for making multi-ply paper in which the different plies are made in separate headboxes and couched together at their sides having more fines, and that column 2, lines 12 - 18 disclose that advantages of joining the plies using the surface having the most fines. Applicants traverse the Examiner's assertions.

Applicants' independent claim 46 recites, *inter alia*, at least two formers for forming at least two layers in which *each layer has a higher content of fines on one side* respectively, and a couching zone in which the at least two layers are couched together such that *each layer's side having a higher content of fines contact each other*, wherein at least one of the at least two formers comprises *at least one gap former*. Applicants' independent claim 75 recites, *inter alia*, forming at least two layers via at least two formers, such that *each layer has a side with a higher fines content*, and couching together the at least two layers in a couching zone so that *the sides with higher fines content contact each other*, wherein at least one of the two layers is formed by *at least one gap former*. Applicants submit that TURNER fails to disclose at least the above-noted features of the instant invention.

In the Remand from the Board of Patent Appeals and Interferences, the Board indicated the Examiner had not “explained how the apparatus of TURNER is capable of

operating as presently claimed,” nor had the Examiner provided any “analysis which explains why the apparatus of Turner can be used to form two layers with the claimed distribution of fines. To address this defect of his previous rejection, the Examiner has further asserted TURNER “*seems to show* all of the elements of the claimed device.” Moreover, the Examiner asserts “since most of the dewatering on the gap former occurs at the top . . . , and it is well known Fourdrinier formers have greater concentration of fines at the wire side . . . , then Tuner [sic] et al. are joining plies with higher fines content and therefore, the limitations of the claims are met, or at least the minor modification(s) to obtain the claimed invention would have been obvious to one ordinarily skilled in the art.”

Applicants submit that, in order to show anticipation, each and every recited element of the claims must be shown. Anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art to show each and every limitation of a claimed invention. *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1321 (Fed. Cir. 2003); *Celeritas Technologies, Ltd. v. Rockwell International Corporation*, 150 F.3d 1354, 1360, 47 USPQ 2d 1516, 1522 (Fed. Cir. 1998); *Applied Medical Resources Corporation v. United States Surgical Corporation*, 147 F.3d 1374, 1377, 47 USPQ2d 1289, 1291 (Fed. Cir. 1998); *Rockwell International Corporation v. The United States, et al.*, 147 F.3d 1358, 47 USPQ2d 1027, 1029 (Fed. Cir. 1998).

The single piece of prior art must describe and enable all limitations of the claimed invention with “sufficient clarity and detail” so that those ordinarily skilled in the art would recognize that the claimed subject matter already existed in the prior art. *Elan Pharmaceuticals Inc. v. Mayo Foundation for Medical Education and Research*, 64 USPQ2d 1292, 1296 (Fed. Cir. 2002); *Crown Operations International, Ltd. v. Solutia Inc.*,

289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002); *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

According to the Examiner's analysis of TURNER, the pending claims are unpatentable because TURNER "seems to show all of the elements." Applicants are unaware of any legal basis for supporting an anticipation rejection because the applied art seems to show the claimed features. That is, the applied art either discloses (expressly or inherently) all of the claimed features, such that the Examiner has the duty to point out such disclosure on the record so Applicants can adequately address his assertions, or the applied art does not disclose all claimed features, such that the Examiner has a duty to withdraw the rejection.

Further, Applicants are equally unaware of any basis under 35 U.S.C. § 103(a) that a documents that seems to show all of the elements would render an invention unpatentable. Instead, in establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the Examiner to provide a reason *why* one of ordinary skill in the art would have found it obvious to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972 (BPAI 1985) To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from Applicant's disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Notwithstanding the Examiner's statement in the rejection that it would have been obvious to modify TURNER, Applicants contend that the Examiner has not set forth any reasons *why* one of ordinary skill in the art would have been led to modify the apparatus and process of

TURNER. It is respectfully submitted that the courts have long held that it is impermissible to use Applicants' claimed invention as an instruction manual or "template" to piece together teachings of the prior art so that the claimed invention is purportedly rendered obvious. See *In re Fritch*, 972 R.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

In this regard, Applicants submit the Examiner's assertions that the applied art seems to show all the recited features is not a teaching or suggestion of why the invention would be rendered unpatentable. Thus, Applicants submit the instant rejection is improper and should be withdrawn.

Further, in the instant action, the Examiner has made expressly contradictory statements regarding the disclosure of TURNER and his assertions of that which is well known. By way of example, the Examiner has produced an annotated Figure 1 of TURNER on page 3 of the instant Office Action. The Examiner has provided annotated commentary such as "Fordrinier Former: most of fines at the air side, top side." However, page 2 of the instant Office Action asserts "it is well known that Fourdrinier formers have greater concentration of fines *at the wire side*." [emphasis added].

Thus, as the Examiner's annotated drawing and express assertions of that which is well known wholly contradict each other, Applicants submit the Examiner's basis for anticipation and/or obviousness is unsupportable on the current record.

Further, while the Examiner is attempting to address the Board's remand, i.e., to explain how TURNER is capable of operating in the claimed manner, Applicants submit the Examiner is not certain how TURNER operates, such that his assertions of anticipation/obviousness are based solely upon Applicants' disclosure and not upon any specific teaching or suggestion in the art of record.

Applicants again note, while disclosing a multi-ply forming apparatus and process, TURNER fails to disclose a gap former arranged to produce a web layer having one side with higher fines content than the other, and, therefore, certainly fails to disclose joining the sides of the layers having the higher fines content together, as recited in at least independent claims 46 and 75. That is, because TURNER provides no disclosure that each web layer is formed to have one side with a higher fines content than the other, Applicants submit that the Examiner's assertions that TURNER is structurally the same as the recited invention is without basis in the art of record.

Further, notwithstanding the Examiner's annotation on Figure 1 of TURNER that most fines are at the higher dewatering side of a gap former, this does not comport with TURNER's specific disclosure on column 2, lines 12 - 18 that "by dewatering through both surfaces of both the top and bottom plies, formation of the individual plies is accomplished faster and, equally important, the ply faces which come into ply bonding engagement are better prepared, by virtue of having more fines and less fillers at their surface, to remain permanently bonded together." Applicants submit TURNER's disclosure, absent any prejudice based upon prior review and consideration of Applicants' disclosure, merely provides that the bonding surfaces have more fines than fillers, not that one bonding surface of the layers has a higher fines content than its opposite surface.

Applicants note, rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner has the initial duty of supplying the factual basis for the rejection and may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual

basis. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967). As stated in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984):

[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

In view of the above, it is apparent that TURNER fails to disclose an arrangement or process in which that the sides of the web layers having the higher fines content are couched together in a couching zone, as recited in the pending claims. That is, because TURNER fails to provide the necessary structure to form the web layers in the manner recited in at least independent claims 46 and 75, Applicants submit that TURNER cannot even arguably anticipate the recited feature that the sides having the higher fines content (not taught by TURNER) are couched together, as is likewise recited in claims 46 and 75.

As Applicants have maintained throughout the prosecution of this application, the Examiner has made certain assumptions of the TURNER process and apparatus based upon the disclosure in the instant application, which are not based upon any specific teaching presented in TURNER. In particular, Applicants note that the Examiner continues to construe the disclosure of TURNER in view of Applicants' own disclosure, instead of interpreting the disclosure of TURNER in light of that which was known to those ordinarily skilled in the art at the time of the instant invention.

Applicants further submit the Examiner's attempted explanation of TURNER's capability to operate in the manner set forth in the pending claims is likewise tainted by Applicants' own disclosure. Applicants submit it is not enough that the Examiner can rearrange the disclosed features/elements of TURNER to reproduce the Applicants'

invention, but there must be some articulable motivation or rationale in the applied art for rearranging the disclosed features in the manner suggested by the Examiner.

Thus, Applicants continue to point out, as the Examiner's continued (mis)interpretation of TURNER is based solely upon review of the instant application and claims, the asserted rejection is not based upon the disclosure of TURNER. In particular, TURNER fails to disclose an arrangement or process to form one side of a web layer with a higher fines content than the other side, and no disclosure of an arrangement or process in which sides of web layers having higher fines contents than their other sides are couched together, as recited in the independent claims. Thus, Applicants submit that the rejection is improper and should be withdrawn.

In contrast to the instant invention, TURNER specifically discloses a process and apparatus specially designed to join together ply faces that have "more fines and less fillers at their surface," and that this objective is achieved through dewatering both surfaces of each ply. (TURNER, column 2, lines 12 - 18). Moreover, there is no teaching or suggestion, either in TURNER or any other applied document of record, to support an assertion TURNER is capable of operating in the manner recited in the pending claims. In this regard, TURNER provides absolutely no disclosure regarding that comparative amounts of fines between opposite sides of the web. Thus, Applicants submit that the only reasonable interpretation of TURNER's disclosure, when considering only the disclosure of TURNER, is that the surfaces of each ply to be joined are dewatered so that the surfaces to be joined contain a higher content of fines than a content of fillers.



However, Applicants submit that ply surfaces having a higher fines to fillers content is not the same as a ply having one surface with a higher fines content than the other surface, which is recited in Applicants' claims.

Moreover, because TURNER fails to provide any teaching or suggestion of a comparative fines content between opposite sides of a same ply, Applicants submit that there is no teaching in TURNER to even arguably interpret that web plies are formed to have a higher fines content on one side than the other side, or that the sides of web plies having the higher fines content are couched together, as recited in at least independent claims 46 and 75.

In fact, Applicants note that even TURNER teaches against the Examiner's interpretation. As is expressly disclosed at column 1, lines 52 - 66,

The top ply is formed between two forming wires along a gently undulating path where the dewatering process is carried out through both its faces *to produce a web which has a more uniform distribution of fines, fillers and fibers on both its sides*, thus providing its surfaces with a greater affinity for ply bonding. This dewatering through both sides not only produces a more uniform, one-sided web (i.e., a web wherein *both sides are more nearly the same after the dewatering process*), but in addition, this degree of dewatering of the top ply is accomplished quickly so it can have a higher caliper and still be brought into ply bonding contact with the surface of the base ply which may be formed on an ordinary fourdrinier-type papermaking machine. [emphasis added].

Thus, Applicants submit that, as TURNER expressly discloses an intention to produce a *uniform web* in which *both sides are more nearly the same* after dewatering, the Examiner's assertions of anticipation are contrary to the express disclosure of the applied document.

Further, Applicants note that, while the surfaces of the individual layers to be couched together according to the instant invention may have a higher fines content than

filler content, in order to anticipate the instant invention TURNER must disclose every recited feature of the invention, including that each layer has a higher fines content on one side, and that the sides with the higher fines content are couched together in a couching zone, as recited in at least independent claims 46 and 75.

Moreover, Applicants note that, by expressly disclosing an intention to "produce a web having a *more uniform distribution* of fines, fillers and fibers *on both sides*, thus providing *its surfaces* with a greater affinity for ply bonding," [emphasis added]. (TURNER, column 1, lines 54 - 57), TURNER fails to provide any teaching of couching together surfaces of individual plies having a higher fines content than its opposite ply surface. In other words, as TURNER's expressed intent of a uniform distribution of fines, fillers, and fibers on both sides is contrary to forming individual plies having a higher fines content on one surface as compared to its other surface. Thus, Applicants submit that TURNER fails to provide any disclosure of an apparatus or process for couching together the surfaces of each ply having a higher content of fines than its other ply surface, as recited in at least independent claims 46 and 75. Instead, the only guidance to the practitioner in the art provided by TURNER is that, in the production of a layered web, *both surfaces* of each ply are formed to be uniform and essentially the same, i.e., with a higher content of fines to fillers, so that each surface of each ply is provided with a greater affinity for ply bonding.

Thus, Applicants submit that, as TURNER fails to disclose or even arguably suggest the combination of features recited in the pending claims. Thus, Applicants submit the Examiner has failed to provide any adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. § 102(b), and no proper modification of TURNER arguably renders unpatentable under 35 U.S.C. § 103(a) the combination of features recited in at

least independent claims 46 and 75. Thus, Applicants submit that the instant rejection is improper and should be withdrawn.

Referring again to Remand from the Board, Applicants acknowledge they have made no assertions regarding TURNER's capability or incapability of operating in the manner recited in the pending claims. Applicants submit they have no duty to show the prior art is capable of operating in the manner recited *unless* the Examiner presents a *prima facie* case that TURNER is capable of operating in the manner of the pending claims, which is has not done. Applicants submit, by the instant action the Examiner has not provide such a *prima facie* case that TURNER is capable of operating as the instant invention, nor has the Examiner even arguably addressed the Applicants' arguments that TURNER teaches against the asserted modification.

Further, contrary to the Examiner's assertions, no admission has been made by Applicants that merely forming a web on a single wire produces a higher content of fines on the unsupported side, nor have Applicants admitted that it is well known that the unsupported side contains the most fines due to less dewatering. While the "Background of the Invention" section of the instant application identifies a number of known formers, this disclosure also sets forth specific action necessary to achieve a concentration of fines at a particular side of the web, Applicants have made no representations that this information is prior art. Moreover, while a fourdrinier former is discussed, the background discussion is not an admission that the concentration of fines at the upper side achieved with power pulses was known to those ordinarily skilled in art at the time of the invention.

Moreover, notwithstanding Applicants' background discussion, Applicants note that TURNER fails to disclose that the employed fourdrinier former utilizes power pulses to

control the concentration of fines, and specifically discloses that its process and apparatus utilize dewatering through both surfaces of both the top and bottom plies so that a desired uniformity and bonding affinity, i.e., a higher content of fines to fillers, for both sides is achieved.

Thus, Applicants note that, even assuming, *arguendo*, one were to consider Applicants' discussion of background information as an admission of prior art (which Applicants submit it is not), the disclosed apparatus and process of TURNER, which expressly discloses dewatering through both sides of each ply, is contrary to this disclosure. Moreover, it would not have been apparent to modify TURNER in view of this information because to do so would eliminate TURNER's intention of producing a uniform web in which each surface has an affinity for bonding by having a higher content of fines to fillers.

Because TURNER fails to disclose or suggest at least the above-noted features, Applicants submit that the applied art fails to disclose each and every recited feature of the instant invention. Accordingly, Applicants submit that the Examiner has failed to establish an adequate evidentiary basis to support a rejection of anticipation under 35 U.S.C. § 102(b) or of obviousness under 35 U.S.C. § 103(a), such that the instant rejections are improper and should be withdrawn.

Further still, Applicants submit that even if it is considered that the prior art documents anticipate or render unpatentable the invention recited in the independent claims, which Applicants submit they do not, the applied documents fail to anticipate or render obvious the various recited parameters of the formers and/or their arrangement within the apparatus for producing the multilayered web in accordance with the features of

the instant invention. Thus, Applicants submit that claims 47, 74, and 76 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. Moreover, Applicants further submit that claim 74 is separately patentable TURNER. In particular, Applicants submit that TURNER fails to anticipate, *inter alia*, *uniform pressure dewatering elements* for web dewatering, as recited in claim 74.

Accordingly, Applicants request the Examiner reconsider and withdraw the rejection of claims 46, 47, and 74 - 76 under 35 U.S.C. § 102(b)/35 U.S.C. § 103(a), and indicate these claims are allowable in the next official communication.

***Traversal of Rejection Under 35 U.S.C. § 103(a)***

The rejection of claims 48 – 52, 62 – 73, 77 – 80, and 89 – 97 under 35 U.S.C. § 103(a) as being unpatentable over TURNER, as further evidenced by U.S. Patent Nos. 3,378,435; 5,607,551; 5,238,534; and GB 2 283 766. The Examiner asserts that, while TURNER fails to disclose various recited features of the instant invention, the Examiner asserts that these features are functionally equivalent element and the use of one for the other would have been obvious. Applicants traverse the Examiner's assertions.

As discussed above, rejections based on 35 U.S.C. § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner has the initial duty of supplying the factual basis for the rejection and may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967).

As stated in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984):

[t]o imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.

It is apparent that the only reason to modify TURNER in the manner proposed by the Examiner results from a review of Applicants' disclosure and the application impermissible hindsight.

Applicants submit that, because TURNER expressly discloses that both surfaces of the plies to be dewatered and joined are formed to have a more uniform distribution of fines, fillers and fibers, and because it is the intention of TURNER that this dewatering procedure produce web plies in which both sides of the web are more nearly the same, TURNER fails to teach or even arguably suggest the subject matter noted above as deficient in TURNER.

That is, Applicants submit that TURNER fails to teach or suggest producing a individual layers in which each layer has a side having a higher content of fines than the other side, and fails to teach that these sides having the higher fines content are couched together, as recited in at least independent claims 46 and 75. Moreover, as discussed above, the Examiner's interpretation of TURNER's disclosure is colored by his review of Applicants' disclosure and claims. Similarly, Applicants submit that the Examiner's assertions of obviousness are likewise based upon this improper interpretation of TURNER as a result of a review of Applicants' invention.

Accordingly, Applicants submit that TURNER fails to provide the requisite motivation or rationale for modification in the manner asserted by the Examiner, and that the

Examiner's assertions of obviousness are based, not upon any particular teaching or suggestion provided in TURNER, but instead are based upon an improper interpretation of TURNER after reviewing Applicants' disclosure and claims. Thus, Applicants submit that the instant obviousness rejection is based upon the use of impermissible hindsight, such that Applicants invention suggests the Examiner's interpretation of the art of record.

Further, because TURNER fails to provide any teaching or suggestion with regard to forming a web ply having a surface with a higher fines content than its other surface, Applicants submit that TURNER cannot teach or suggest the recited apparatus and/or process features of the present invention that achieve this result. Accordingly, Applicants submit that no proper modification of TURNER teaches or suggests the combination of features recited in at least the independent claims, and, therefore, that TURNER fails to render unpatentable the instant invention.

Moreover, as discussed above, in establishing a *prima facie* case of obviousness under 35 U.S.C. § 103, it is incumbent upon the Examiner to provide a reason *why* one of ordinary skill in the art would have found it obvious to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972 (BPAI 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from Applicant's disclosure. See, for example, *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Notwithstanding the Examiner's statement in the rejection that it would have been obvious to modify TURNER, Applicants contend that the Examiner has not set forth any reasons *why* one of ordinary skill in the art would have been led to modify the

apparatus and process of TURNER. It is respectfully submitted that the courts have long held that it is impermissible to use Applicants' claimed invention as an instruction manual or "template" to piece together teachings of the prior art so that the claimed invention is purportedly rendered obvious. See *In re Fritch*, 972 R.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

While the Examiner has made sweeping unsubstantiated assertions regarding the interchangeability of various formers, he has not provided any teaching or suggestion *why* it would have been obvious or even possible for these formers to produce a web layer having a higher content of fines on one side, as is recited in the pending claims. By way of example, Applicants note that, while TURNER discloses a former that includes two converging forming wires, the crescent former of U.S. Patent No. 3,378,435 includes a forming wire and a felt arranged to converge. Thus, as the two formers are structurally distinct from each other, Applicants submit that it is not apparent that substituting a crescent former for the former of TURNER would enable TURNER to operate in its intended manner, i.e., there is no teaching or suggestion in the art of record that the crescent former forms a layer having a bonding surface with a higher content of fines than fillers, as required by TURNER. Similar defects arise with the Examiner's other baseless assertions of obviousness.

Because it is not apparent from the art of record that the crescent former (or any other type of former) will enable TURNER to operate in its intended manner, Applicants submit that the art of record fails to provide the necessary motivation or rationale for combining the applied art in the manner asserted by the Examiner.



Moreover, because the Examiner has not shown that it would have been apparent from the disclosure TURNER to form the web layers having one side with a higher fines content than the other side, Applicants submit that there is certainly no suggestion of an arrangement in which sides of web layers having the higher fines content are couched together in a couching zone, as recited in at least independent claims 46 and 75.

As alluded to above, Applicants note that the Examiner has not provided any documentary evidence that changing the former of TURNER would not prevent TURNER from forming its intended web plies, i.e., to be uniform on each side with regard to fines, fillers and fibers, and to exhibit a higher content of fines than fillers on both sides of each ply. In other words, while, generally speaking, formers are utilized for similar purposes, i.e., to form and dewater the web, there is no teaching or suggestion that any of the formers noted by the Examiner would achieve the desired results of TURNER, and certainly no suggestion that these formers would operate in the manner recited in at least independent claims 46 and 75.

Moreover, Applicants submit that, if the desired results of TURNER are not achieved by the asserted modification, then it would not have been obvious to modify TURNER in the manner set forth by the Examiner. Further, Applicants note that it is the Examiner's burden to show that the asserted modification would not be contrary to the intended operation of TURNER, which the Examiner has not shown.

Of course, Applicants further submit that, even assuming, *arguendo*, that the art of record suggested that the asserted modification of TURNER enabled modified TURNER to operate in its intended manner (which Applicants submit it does not), such an apparatus or process, as discussed above, does not correspond to the apparatus and process recited in

at least independent claims 46 and 75. Thus, notwithstanding whether the asserted modification is proper (which Applicants submit it is not), no proper modification of TURNER renders the instant invention obvious.

Further, Applicants submit that even if it is considered that the prior art documents render unpatentable the invention recited in the independent claims, which Applicants submit they do not, the applied documents fail to anticipate the various recited parameters of the formers and/or their arrangement within the apparatus for producing the multilayered web in accordance with the features of the instant invention. Thus, Applicants submit that claims 48 - 52, 62 - 73, 77 - 80, and 89 - 97 are allowable at least for the reason that these claims depend from allowable base claims and because these claims recite additional features that further define the present invention. Moreover, Applicants further submit that claims 48 - 52, 62 - 73, 77 - 80, and 89 - 97 are separately patentable TURNER. In particular, Applicants submit that TURNER fails to teach or suggest, *inter alia*, said at least one gap former comprises two circulating continuous dewatering belts convergingly arranged to form a headbox nip, and in which said dewatering belts are guided in an area of said headbox nip over a forming element, as recited in claim 48; a headbox arranged to supply a fibrous suspension to said headbox nip, as recited in claim 49; said forming element comprises a *forming roll*, as recited in claim 50; said at least one gap former comprises a *first gap former* and a *second gap former* arranged to form at least two layers, wherein *the higher content of fines side of said at least two layers occurs on a forming element side*, as recited in claim 51; the *web travel directions* of said first and second gap formers are *opposite each other*, as recited in claim 52; a first layer of the at least two layers to be couched together, is created by a fourdrinier former and sheet formation of the

first layer occurs with the *higher content of fines on an outer side facing away from a continuous wire*, and wherein a second layer is created by said at least one gap former and sheet formation occurs in the second layer with a *higher content of fines on the forming element side*, as recited in claim 62; a *stream direction* of a headbox associated with said first gap former *correlates in general with the travel direction of the first layer* created by said fourdrinier former, as recited in claim 63; the second layer created by said at least one gap former is introduced, after a separation of said two dewatering belts of said at least one gap former, *together with said outer dewatering belt into said couching zone* in which the second layer is joined with said continuous belt for the first and second layers to be couched together, as recited in claim 64; said continuous wire is guided in said couching zone in a generally horizontal direction, as recited in claim 65; a *second gap former* arranged to form a third layer, wherein sheet formation of the third layer occurs with a higher content of fines on a forming element side, and wherein the third layer is couched together with the second layer in a second couching zone, as recited in claim 66; the stream direction of a headbox associated with said *second gap former* corresponds to the travel direction of the first layer created by said fourdrinier former, as recited in claim 67; the third layer is introduced after separation of said two dewatering belts of said *second gap former* together with said outer dewatering belt into said second couching zone, wherein the second layer is brought together with said continuous belt for couching together the second and third layers formed by said first and second gap formers, as recited in claim 68; said continuous wire is guided at least in the area of said couching zones in a generally horizontal direction, as recited in claim 69; *at least one additional gap former* arranged for the formation of an at least three-layered fibrous web, wherein sheet

formation of the additional layer occurs with a higher content of fines on the forming element side, wherein the additional layer is couched in an additional couching zone with one of the at least two layers formed by the first or second gap former, and where at least one of the at least two layers is couched together with the additional layer so that their sides having higher content of fines come into contact with each other, as recited in claim 70; the stream direction of said headbox associated with said *at least one additional gap former* corresponds to the travel direction of the fibrous web to be created, as recited in claim 71; at least one of a *multi-layered headbox* and a *single layered headbox* is provided, as recited in claim 72; at least one *single layered headbox* is provided, as recited in claim 73; the at least one gap former comprises two circulating continuous dewatering belts that run together forming a headbox nip and which are guided in the area of the headbox nip, loaded with a fibrous suspension by a headbox, over a forming element, as recited in claim 77; the forming element comprises a *forming roll*, as recited in claim 78; the at least one gap former comprises a *first gap former* and a *second gap former* arranged to form at least two layers, wherein the *higher content of fines side of said at least two layers occurs on a forming element side*, as recited in claim 79; the *first and second gap formers* are operated in *opposite web travel directions*, as recited in claim 80; the first of the at least two layers to be couched together is created by a fourdrinier former and sheet formation of the first layer occurs with a *higher content of fines on the outside facing away from the continuous wire*, and the second layer is created by the at least one gap former and sheet formation occurs in the second layer with a *higher content of fines on a forming element side*, as recited in claim 89; the *stream direction* of a headbox associated with the first gap former *correlates in general with the travel direction of the first layer created by the fourdrinier former*, as

recited in claim 90; the second layer created by the at least one gap former is guided to the couching zone after separation of the two dewatering belts of the at least one gap former *together with the outer dewatering belt*, in which the second layer is joined together with the continuous belt for the first and second layers to be couched together, as recited in claim 91; a *second gap former* is arranged to form a third layer wherein sheet formation of the third layer occurs with a higher content of fines on the forming element side, and wherein the third layer is couched together with the second layer in a second couching zone, as recited in claim 92; the stream direction of a headbox associated with the *second gap former* corresponds to the travel direction of the first layer formed by the fourdrinier former, as recited in claim 93; the *third layer* is introduced after separation of the two dewatering belts of the *second gap former* together with the outer dewatering belt into the second couching zone in which it is brought together with the continuous belt for the couching of the second and third layer formed by the first and second gap formers, as recited in claim 94; at least one *additional gap former* is arranged for the formation of an at least three-layered fibrous web, wherein sheet formation of the additional layer occurs with a higher content of fines on the forming element side, wherein the additional layer is couched in an additional couching zone with one of the at least two layers formed by the first or second gap former, and where at least one of the at least two layers is couched together with the additional layer so that their sides having higher content of fines come into contact with each other, as recited in claim 95; the *stream direction* of a headbox associated with the *additional gap former* corresponds to the *travel direction of the fibrous web* to be created, as recited in claim 96; and at least one of a *multi-layered headbox* and *single-layered headbox* is used, as recited in claim 97.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 48 – 52, 62 – 73, 77 – 80, and 89 – 97 under 35 U.S.C. § 103(a), and indicate the claims are allowable in the next official action.

***Application is Allowable***

Thus, Applicants respectfully submit that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. §§ 102 and 103, and respectfully request the Examiner to indicate allowance of each and every pending claim of the present invention.

***Authorization to Charge Deposit Account***

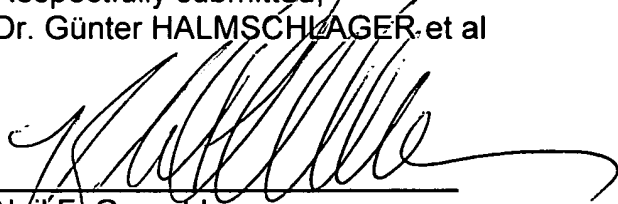
The undersigned authorizes the charging of any necessary fees, including any extensions of time fees required to place the application in condition for allowance by Examiner's Amendment, to Deposit Account No. 19 - 0089 in order to maintain pendency of this application.

**CONCLUSION**

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicants' invention, as recited in each of claims 46 – 97. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

Respectfully submitted,  
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